

FILED
 JAN 03 2006
 RICHARD W. WIEKING
 CLERK U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

JEREMY MAURER, on behalf of himself
 and all others similarly situated,

Plaintiffs,

vs.

SPECIAL DATA PROCESSING CORP.
 d/b/a NATIONAL MAGAZINE
 EXCHANGE,

Defendant.

CASE NO. 04-CV-04093-MJJ

[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS SETTLEMENT
AS SET FORTH IN THE
SETTLEMENT AGREEMENT

JUDGE: The Hon. Martin J. Jenkins
CTRM.: 11

WHEREAS, a putative class action is pending in the Court entitled *Jeremy Maurer, on behalf of himself and those similarly situated v. Special Data Processing Corp. d/b/a National Magazine Exchange*, Case No. C 04-4093 ADR (MJJ), and which is the lawsuit (the "Action") described in the Settlement Agreement; and

WHEREAS, the parties having made application pursuant to Federal Rule of Civil Procedure 23, for an order approving the settlement of the Action, in accordance with a Settlement Agreement and Release and the Exhibits annexed thereto (the "Settlement Agreement"), which sets forth the terms and conditions for a proposed settlement of the Action and for dismissal of the Action with prejudice upon the terms and conditions set forth in the Settlement Agreement; and

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04-CV-04093-MJJ
 [PROPOSED ORDER] PRELIMINARILY
 APPROVING CLASS SETTLEMENT.

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 SAN DIEGO, CALIFORNIA 92101-3387

1 WHEREAS, the Court having read and considered the Settlement Agreement and
2 the Settlement; and

3 WHEREAS, all defined terms contained herein shall have the same meanings as set
4 forth in the Settlement Agreement;

5 NOW THEREFORE, IT IS HEREBY ORDERED:

6 1. For the purposes of this Settlement, the Court has jurisdiction over the
7 subject matter of the action and personal jurisdiction over the parties and the members of
8 the Settlement Class described below.

9 2. Pursuant to Federal Rule of Civil Procedure 23(b)(2), the Court preliminarily
10 certifies, solely for purposes of effectuating this Settlement, a "Settlement Class" defined
11 as:

12 All persons in the United States whose Consumer Report NME
13 obtained from Consumer Reporting Agency without the
14 express consent of the consumer between September 28, 2002
and the date of the entry of Final Judgment (the "Settlement
Class").

15 The "Class Period" for purposes of this Preliminary Approval Order is September 28, 2002
16 through the present and ending upon the entry of Final Judgment in this Action.

17 3. With respect to the Settlement Class, this Court preliminarily finds for
18 settlement purposes only that: (a) the Settlement Class members are so numerous that
19 joinder of all Settlement Class members in the Action is impracticable; (b) there are
20 questions of law and fact common to the Settlement Class which predominate over any
21 individual questions; (c) the claims of the Named Plaintiff are typical of the claims of the
22 Settlement Class; (d) the Named Plaintiff and his counsel fairly and adequately represent
23 and protect the interests of all of the Settlement Class Members; and (e) a class action is
24 superior to other available methods for the fair and efficient adjudication of the instant
25 controversy.

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[PROPOSED] ORDER PRELIMINARILY
APPROVING CLASS SETTLEMENT

1 4. The Court does hereby preliminarily approve the Settlement Agreement and
2 the Settlement as being fair, adequate, and reasonable as to the Settlement Class Members,
3 subject to any further consideration the Court deems appropriate at the Final Fairness
4 Hearing described below.

5 5. The Court does hereby preliminarily approve the appointment of Jeremy
6 Maurer as Class Representative and finds that the modest \$5,000 incentive set forth in the
7 Settlement Agreement is appropriate should the Settlement be finally approved at the
8 Fairness Hearing and Final Judgment entered in this Action.

9 6. The Court does hereby preliminarily appoint Interim Class Counsel as Class
10 Counsel and also preliminarily approves Class Counsel's application for Attorneys Fees
11 and Expenses in the agreed upon amount of \$250,000 to paid in accordance with the terms
12 of the Settlement Agreement should the Settlement be finally approved at the Fairness
13 Hearing and Final Judgment entered in this Action.

14 7. A hearing (the "Fairness Hearing") shall be held before this Court at
15 9:30 AM, on February 24, 2006 to determine: whether the
16 proposed Settlement of the Action on the terms and conditions provided for in the
17 Settlement Agreement is fair, adequate and reasonable as to the Settlement Class Members
18 and should be approved by the Court; whether a Final Approval Order and Judgment as
19 provided for in the Settlement agreement should be entered; and to finally determine the
20 amount of the fees and expenses that should be awarded to Plaintiffs' Counsel, and of the
21 fairness of the incentive payments to the Plaintiff, Class Representative, as proposed in the
22 Settlement Agreement.

23 8. This Court has determined, after balancing the risk that notice costs may
24 deter the pursuit of class relief, that notice to Class Members shall not be required.

25 10. All proceedings in this Action shall continue to be stayed until further order
26 of the Court, except as may be necessary to implement the Settlement or comply with the
27 terms of the Settlement Agreement. This stay is necessary to protect and effectuate the

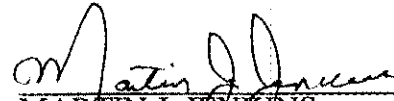
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1 Settlement and this Preliminary Approval Order, and is ordered in aid of this Court's
2 jurisdiction.

3 IT IS SO ORDERED.

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5 DATED: 1/3/2005


MARTIN J. JENKINS
United States District Judge

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